INDEX.

Petition for Writ of Certiorari 1-6
Summary Statement of the Matter Involved 2
Decision of the Circuit Court 3
Jurisdiction 4
Questions Presented 4
Reasons for Granting the Writ 5
Brief in Support of Petition for Writ of Certiorari 7-27
1. Opinions of the Courts Below 7
II. Jurisdiction 7
III. Statement of the Case 7
1. The Misappropriation of Petitioner's Business System 7
2. Palming Off Petitioner's Products as Products of Its Own 9
3. Publication by Respondent of Factual Statements Which Respondents Knew to Be False, and Publication by Respondent of Defamatory Utterances Concerning Petitioner, Which Respondent Knew to Be False 9
IV. Specification of Errors 11
V. Summary of Argument 11
ARGUMENT 13
I. The Court Erred in Holding that this Case Was Governed by the Decision of Erie Railroad Company *vs.* Tompkins, 304 U. S. 64 13
II. The Decree of the District Court Should Be Affirmed 17
1. Misappropriation of Petitioner's Business System 17
2. Misrepresentations Concerning Factual Statements, Made by Respondent, Which Respondent Knew to Be False 18

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3. Respondent's Consciously False, Libelous Utterances Concerning Petitioner 19

III. The Court Erred in Failing to Examine the Law of Conflict of Laws of Illinois, the State in Which the District Court Was Sitting, to Determine by the Law of What State the Controversy Should Be Determined 19

IV. The Court of Appeals Erred in Classifying the Charged Acts of Unfair Competition as "Main" and "Incidental." The Misrepresentations in Advertising, the Libelous Utterances, and the Palming Off of Petitioner's Goods as Those of Respondent Were All Separate and Independe. Torts and Are in Nowise "Incidental" to Any Other Tort Charged in the Complaint. A Decision by the Court that the Charge of Misappropriation of Petitioner's Business System Was Not Actionable Does Not Relieve the Court of the Duty of Considering the Other Independent Charges of Actionable Wrong Based on Entirely Different Sets of Facts Contained in the Complaint 23

V. If the Rule in the *Erie* Case Applies the Court Erred in Failing to Remand the Case With Instructions that Petitioner Be Permitted to Offer Further Evidence to Establish by the Law of What State or States the Controversy Should Be Governed 26

Conclusion 27

Cases Cited.

Chase National Bank *v.* Mobile & Ohio Railroad Co., 30 F. Supp. 565, 568 13
Erie Railroad Company *v.* Tompkins, 304 U. S. 64 ..... 3, 4, 5, 6, 11, 27
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Hunter *v.* Derby Foods, Inc., 110 F. (2d) 970 21
Illinois Central Railroad Co. *v.* Moore, 112 F. (2d) 959, 963 14
International News Service *v.* Associated Press, 248 U. S. 215 ..... 6, 17
Klaxon *v.* Stentor, 313 U. S. 487 ..... 20, 25
Maytag Co. *v.* Meadows Manufacturing Co., 45 F. (2d) 299 19
McGogney *v.* Mutual Life Ins. Co., 103 F. (2d) 649 26
Meyer *v.* Hurwitz, 5 F. (2d) 370, appeal dismissed 10 F. (2d) 1019 18
Motor Improvements, Inc. *v.* A. C. Spark Plug Co., 80 F. (2d) 385 18
Ruhlin *v.* New York Life Ins. Co., 304 U. S. 202 26
Schecter *v.* United States, 295 U. S. 495, 531 17
Sternberg *v.* Miller, 170 Fed. 298 19

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Sec. 240(a), Judicial Code (28 U. S. C. 347) 4

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1941.

No. .....

ADDRESSOGRAPH-MULTIGRAPH CORPORATION,
a corporation,
Petitioner,

vs.

AMERICAN EXPANSION BOLT AND MANUFACTURING COMPANY, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Addressograph-Multigraph Corporation, respectfully prays that a writ of certiorari be issued to review the decree of the United States Circuit

Court of Appeals for the Seventh Circuit, entered November 25, 1941 (R. 517), reversing the decree of the District Court of the United States, Northern District of Illinois, Eastern Division (R. 427).

A certified transcript of the record in the case, including the proceedings in the Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the rules of this Court.

Summary Statement of the Matter Involved.

This is an action brought by petitioner against respondent to enjoin the respondent from continuing various acts constituting unfair trade practices, and for an accounting of profits and damages suffered by petitioner by reason of respondent's past acts of unfair trade.

The District Court (Igoe, J.) found that the respondent had committed all but two of the acts of unfair trade complained of in petitioner's complaint (R. 421-426), and, accordingly, granted the relief prayed for (R. 427). Respondent appealed to the Circuit Court of Appeals but petitioner took no cross appeal.

The respondent's practices which the District Court found constituted actionable unfair competition and libel were as follows:

1. Respondent misappropriated the petitioner's business system which petitioner had originated, built up, and was maintaining.

2. Respondent palmed off petitioner's products as products of its manufacture.

3. Respondent falsely claimed and advertised that it purchased its plate material from the same sources as did petitioner; that its plate material was made ac-

cording to the same specifications as was petitioner's plate material; that respondent's plates and petitioner's plates were submitted to the United States Bureau of Standards for comparative tests, from which tests respondent's plates emerged victorious.

4. Respondent consciously and knowingly made false, defamatory charges that petitioner was a monopoly and charged monopolistic prices, and that petitioner's agents had maliciously tampered with and sabotaged machines of customers who were using plates manufactured by respondent.

Decision of the Circuit Court.

The Circuit Court of Appeals, in reversing the District Court (R. 517), did not question the findings of fact as made by the District Court, but reversed the case entirely on the theory that the complaint did not state a cause of action under the substantive law of the state of Illinois, which, under the decision of *Erie Railroad Company* v. *Tompkins,* 304 U. S. 64, the Court believed was the controlling state (R. 511).

If the Court had followed the Illinois rule of conflict of laws it would have been forced to decide that Illinois was not the state whose substantive law determined if the complaint stated a cause of action. The Court avoided this conclusion by saying that the charge of misappropriation of petitioner's business system raised no conflict of laws question and that, as to the remaining acts of unfair competition and libel, there was "no occasion to apply the Illinois conflict of laws doctrine," not because there was not a conflict of laws issue raised, but because the Court considered such other acts "incidental" and "when the main charge fails those incidental thereto must fail" (R. 516-517).

A petition for rehearing was filed by petitioner (R. 519), which was denied by the Court of Appeals (R. 539).

Jurisdiction.

The decree of the Circuit Court of Appeals was entered November 25, 1941 (R. 517). Petition for rehearing was filed December 10, 1941 (R. 518), and was overruled January 14, 1942 (R. 539). Jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

Questions Presented.

1. Whether the rule of the case of *Erie Railroad Company* v. *Tompkins*, 304 U. S. 64, applies to unfair competition actions where the respondent's tortious conduct commences in one state and results in injury to the petitioner in many other states?

2. If the rule of the *Erie* case does not apply, whether there was any error in the decree of the District Court?

3. If the rule of the *Erie* case does apply, whether the manufacture of respondent's products in Illinois, followed by shipment and sale thereof to customers in other states, thereby resulting in injury to petitioner in those states, does not require the Federal Court to apply the rule of conflict of laws of that state in which the Federal Court sits, to determine the state whose substantive law shall govern the rights of the parties?

4. If the rule of the *Erie* case does apply, whether misrepresentations in advertising and libelous utterances concerning the petitioner, both originating from

respondent in the state of Illinois, but published in other states, thereby resulting in injury to petitioner in the states of publication, does not require the Federal Court to apply the rule of conflict of laws of that state in which the Federal Court sits, to determine the state whose substantive law shall govern the rights of the parties?

5. If the rule of the *Erie* case does apply, whether a Federal Court may, without consideration of the local state law, create an independent rule that torts charged in the complaint, which are independent and distinct from another tort therein charged, are "incidental" and must be dismissed without consideration by the Court when the so-called "main" tort is dismissed?

6. Whether an action wherein the complaint was filed and the evidence was presented prior to the decision in the case of *Erie Railroad Company* v. *Tompkins,* 304 U. S. 64, should, in the event that the rule of the *Erie* case is held to be applicable thereto, be remanded to the District Court with instructions to permit petitioner to introduce further evidence to establish which state, or states, law shall govern the rights of the parties?

Reasons for Granting the Writ.

The discretionary power of this Court to grant a writ of certiorari is invoked upon the following reasons:

1. The Court of Appeals has decided that the rule of the case of *Erie Railroad Company* v. *Tompkins,* 304 U. S. 64, applies to actions of unfair competition where the act of the respondent in one state is consummated by injuries to the petitioner in many other states.

The tortious conduct complained of in such an action constitutes a series of successive and continuous acts, resulting in many injuries in many states. An application of the rule of the *Erie* case to such actions can only result in great confusion, arising from the necessity of the Court to apply the law of each state involved, and thereafter enter a decree which may well grant the petitioner relief in some of the states but not in others. This important question of the scope of the *Erie* case has not been, but should be, settled by this Court.

2. If the rule of the *Erie* case is not applicable to this case, then the decision of the Court of Appeals, dismissing this case, is contrary to decisions of this Court, particularly the case of *International News Service* v. *Associated Press*, 248 U. S. 215.

3. The decision of the Circuit Court of Appeals that the substantive law of Illinois determines whether petitioner's complaint stated a cause of action is in conflict with the rule of *Erie Railroad Company* v. *Tompkins*, 304 U. S. 64, because it has been established by the law of the state in which the Federal Court is sitting, namely, Illinois, that whether the complaints in cases such as this one state a cause of action is not to be determined by the substantive law of Illinois. See *Hanna* v. *Grand Trunk Railroad Company*, 41 Ill. App. 116. Thus the Court decided an important question of local law in a way that is in conflict with applicable local decisions.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit should be granted.

ADDRESSOGRAPH-MULTIGRAPH CORPORATION,
By PHILIP M. AITKEN,
Counsel for Petitioner.